



CONTRACT OF PARTNERSHIP (GENERAL PROVISION) (1767-1783)

Essential Elements of Partnership (CHAPTER 1)

- Art. 1767. By the contract of partnership two or more persons bind themselves to contribute money, property, or industry to a common fund with the intention of dividing the profits among themselves.

- Intention to form a contract of partnership
- Participation in both profits and losses
- Community of interests

Characteristic of a Partnership

- It has a separate juridical personality. (Art. 1768, CC)
- It must have a lawful object or purpose and for the common benefit or interest of the partners. (Art. 1770, CC)
- The partners are liable to the creditors of the partnership with their own property, even beyond their contribution. (Art. 1803[1], CC)
- It is founded on the right to choose with whom a person wishes to associate himself, otherwise known as the doctrine of *defectus personae*. (Ortega vs. Court of Appeals, G.R. No. 109248, July 3, 1995)
- As a general rule, all the partners shall be considered agents and whatever any one of them may do alone shall bind the partnership. This is the doctrine of *mutual agency*. (Art. 1803[1], 1818, CC)

Partnership, a Juridical Person

- Art. 1768. The partnership has a juridical personality separate and distinct from that of each of the partners even in case of failure to comply with the requirements of Article 1772] first paragraph.

Effects of failure to comply with statutory requirements

- Under Art 1772 → still has juridical personality
- Partnership still acquires personality despite failure to comply with the requirements of execution of public instrument and registration of name in SEC.
- Under Arts 1773 and 1775

- Partnership with immovable property contributed, if without requisite inventory, signed and attached to public instrument, shall not acquire any juridical personality because the contract itself is void. This is also true for secret associations or societies.

Contract is void

Organizing a partnership is not an absolute right

- It is but a privilege which may be enjoyed only under such terms as the State may deem necessary to impose.

- Art. 1769. In determining whether a partnership exists, these rules shall apply:

- Except as provided by Article 1825, persons who are not partners as to each other are not partners as to third persons.

- Co-ownership or co-possession does not of itself establish a partnership, whether such co-ownership or co-possession do or do not share any profits made by the use of the property.

- The sharing of gross returns does not of itself establish a partnership, whether or not the persons sharing them have a joint or common right or interest in any property from which the returns are derived.

- The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment:

- As a debt by installments or otherwise.
- As wages of an employee or rent to a landlord.
- As an annuity to a widow or representative of a deceased partner.
- As interest on a loan, though the amount of payment vary with the profits of the business.
- As the consideration for the sale of a goodwill of a business or other property by installments or otherwise.

In general, to establish the existence of a partnership:

All of its characteristics must be present

In case of doubt, Art. 1769 shall apply

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